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Administration of justice at the United Nations

Letter dated 8 November 2002 from the President of the United Nations Administrative Tribunal addressed to the Chairman of the Fifth Committee

In section XI, paragraph 7 of its resolution 55/258 of 14 June 2001, the General Assembly took note of the observations of the Advisory Committee on Administrative and Budgetary Questions that there was "a gap" between the statutes of the United Nations Administrative Tribunal (UNAT) and the International Labour Organization Administrative Tribunal (ILOAT) with respect to specific performance of an obligation and compensation limits and requested the Secretary-General to take the necessary measures to close the gap between the statutes of the two Tribunals.

In section XI, paragraph 10, of the same resolution, the General Assembly took note of the intention of the Joint Inspection Unit to continue its study of the possible need for higher-level jurisdiction, in consultation with all organizations of the United Nations system and bearing in mind the national legal systems of States Members of the United Nations, and requested the Joint Inspection Unit to report thereon to the General Assembly at its fifty-seventh session.

The United Nations Administrative Tribunal is pleased to submit its observations and recommendations on the issues of closing the gap between the statutes of UNAT and ILOAT, and the possible need for jurisdiction (see annexes I and II).

I should be grateful if you would have the text of the present letter and its annexes circulated as a document of the Fifth Committee, under agenda item 123.

(*Signed*) Mayer **Gabay**
President of the United Nations
Administrative Tribunal

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Annex I

The administration of justice in the United Nations

1. In section XI, paragraph 10, of its resolution 55/258 of 14 June 2001, the General Assembly took note of the intention of the Joint Inspection Unit to continue its study of the possible need for higher-level jurisdiction, in consultation with all organizations of the United Nations system and bearing in mind the national legal systems of States Members of the United Nations, and requested the Joint Inspection Unit to report thereon to the General Assembly at its fifty-seventh session.

2. The United Nations Administrative Tribunal is aware of the Joint Inspection Unit's recommendation for another layer of appeal, in effect allowing a staff member to contest a ruling of the Tribunal. The Tribunal does not support this recommendation. While it wishes to ensure the most effective and speedy administration of justice for the employees of the Organization, it does not believe that adding to the current procedure will accomplish that goal. The current procedures adequately protect staff members and afford them full justice and consideration of their claims.

3. Currently, the Tribunal benefits from the reports of the Joint Appeals Board and Joint Disciplinary Committee, which are important to an understanding of the dispute. In addition, applicants may argue their claims in person before the Tribunal when an oral proceeding is held. After a decision by the Tribunal, either party may request a revision of judgement on the basis, for example, of new facts. While neither an oral proceeding nor a revision is routine, each offers the possibility of more detailed analysis when appropriate. Furthermore, the establishment of the office of the Ombudsman, and the ongoing consultations to enhance informal conciliation, mediation and negotiation prior to the institution of formalized procedure, as well as proposals to intensify the authority of the Joint Appeals Board, provide adequate and appropriate machinery for the consideration of complaints before they are submitted to the Tribunal.

4. Full analysis of the issues and the protection of the rights of staff members was further ensured by the General Assembly in its resolution 55/159 of 12 December 2000. This recent amendment to the statute of the Tribunal allows significant questions of law to be considered by all the members of the Tribunal, sitting *en banc* as a plenary body. Thus, the Tribunal can now even more adequately protect the rights of the parties than in the past.

5. The Joint Inspection Unit suggests in its report (A/57/441-JIU/REP/2002/5) that national judiciaries invariably include an appellate instance, but UNAT would like to point out that appeals in most municipal systems are directed against decisions taken by a court composed of one single judge. In some domestic legal jurisdictions, sometimes a single instance is established, provided that instance is a collegiate court. But appeals courts are always collegiate bodies, since for among other reasons they give a better guarantee to litigants than decisions taken by a single judge. In this regard it is important to point out that UNAT is a collegiate body, its chambers are composed of three members, and a plenary may be called upon to give a decision in certain cases.

6. The speed with which staff members obtain relief is another concern of the Tribunal. Adding another layer of appeal would delay an already overly long

procedure without providing obvious benefits to employees. It is significant to note in this regard that the report of the Joint Inspection Unit (ibid.) provides that all organizations of the United Nations system, except one, are vehemently against the establishment of a second layer. In their view, the administration of justice in international organizations does not require a second layer, because an additional layer of judicial authority would be lengthy, costly and cumbersome, and would create bureaucratic overload.

7. It is significant also to note the statement of His Excellency Judge Gilbert Guillaume, President of the International Court of Justice, before the Sixth Committee of the United Nations General Assembly on 27 October 2000 and on 31 October 2001 in which he said:

> "Last year I chose to speak to you about a question of ongoing concern to the international legal community: the proliferation of international judicial bodies and its impact on international law ... the first consequence of a proliferation of courts is that it permits litigants to choose from among a range of judicial bodies, thus opening the door to what is often called in 'franglais' 'forum shopping'. The existence of several forums capable of declaring themselves competent to hear a particular dispute enables the parties, more often than not the applicant acting unilaterally, to select the forum which best suits them ... I remain convinced that the proliferation of international bodies could jeopardize the unity of international law. I therefore continue to believe that international lawmakers and courts must in the future exercise great caution in this area."

He added, in his statement to the United Nations General Assembly on 26 October 2000:

> "An initial comment on this point would appear necessary. Before creating a new court, an international legislative body should, I think, ask itself whether the functions it intends to entrust to the judge could not properly be fulfilled by an existing court." (see A/55/PV.41, p. 7)

8. In view of the foregoing the General Assembly rightly decided in its resolution 50/54 of 11 December 1995 to amend the statute of the United Nations Administrative Tribunal by deleting article 11, which provided staff members with an opportunity to appeal to the International Court of Justice. It is important to note in this connection that the three cases accepted by the International Court for review were rejected by the Court. It affirmed each ruling of the Tribunal, which left the staff members in the same position as they had been at the time of the original ruling.

9. Based on the aforesaid, the United Nations Administrative Tribunal strongly believes that there is no need for an additional layer in the appellate machinery. The Administrative Tribunal is itself, in effect, a court of appeal from lower-level quasi-judicial bodies and, as such, satisfies the need for such a review.

Annex II

The administration of justice in the United Nations

1. In section XI, paragraph 7, of its resolution 55/258 of 14 June 2001, the General Assembly took note of the observations of the Advisory Committee on Administrative and Budgetary Questions that there was a "gap" between the statutes of the United Nations Administrative Tribunal (UNAT) and the International Labour Organization Administrative Tribunal (ILOAT) with respect to specific performance of an obligation and compensation limits, and requested the Secretary-General to take the necessary measures to close the gap between the statutes of the two Tribunals.

2. The United Nations Administrative Tribunal is pleased to note that many organs and bodies of the United Nations have consistently called for the closing of this gap:

(a) The Joint Inspection Unit (JIU) is of the opinion that, "to establish a genuine system of administration of justice and enhance the credibility of the Tribunal and other appellate bodies, restrictions on the authority of the Tribunal must be removed. The Tribunal should have full powers to order the rescinding of a decision contested or the specific performance of the obligation invoked". (A/55/57-JIU/REP/2000/1, para. 116)

Therefore, the JIU recommends that:

> "Article 9 of the statute of the Administrative Tribunal should be amended to eliminate present restrictions on the Tribunal's authority. When the Tribunal considers the applications to be well founded, it should have full powers to order the rescinding of the decision contested or the specific performance of the obligation invoked. Furthermore, the Tribunal alone should decide on the appropriate amount of compensation to be paid." (ibid., Executive summary, recommendation 3)

(b) The Advisory Committee on Administrative and Budgetary Questions is of the opinion that:

> "The inability of the Administrative Tribunal to order specific performance seriously limits the staff's right to redress. Although this gap has existed since the inception of the Tribunal, the Committee believes that the time has come to consider closing it, especially when a number of other far-reaching reforms in the area of human resources management are being considered. In this connection, the Committee recalls its comments on the need for an efficiently functioning system for the administration of justice as a key element of reform (see A/55/499)". (A/55/514, para. 10)

(c) The spokesman of the Group of 77 and China stated in the Fifth Committee that: "The Group of 77 and China also look forward to the implementation of section XI, especially the measures to close the gap between the statutes of the United Nations Administrative Tribunal and the Administrative Tribunal of the International Labour Organization". (see A/C.5/55/SR,68, para. 25)

(d) The Federation of International Civil Servants' Associations (FICSA) 1976 Symposium on Recourse Procedures in the Organizations of the United Nations System, stated that the limitations on the powers of UNAT had led to a very

unsatisfactory situation. Recommendation III of the Symposium, which was endorsed by FICSA, read in part as follows:

> "(b) When the Tribunal recognizes that an application is fully justified, it should be for the Tribunal, and not for the Head of the Secretariat, to decide whether the annulment of the decision appealed against or the carrying out of the obligation established is possible and advisable, or whether there is reason to award to the interested party an indemnity as compensation for the prejudice suffered;
>
> "(c) If the Tribunal decides to make an award, it should be free to fix the amount without any predetermined limit being applied so that full compensation for the prejudice suffered may be made."

The United Nations Administrative Tribunal would like to add that closing the gap between the two Tribunals would provide equity and equality for all employees working in the United Nations system. Under the present situation, staff members of the organizations belonging to the United Nations system which are within the jurisdiction of ILOAT may be reinstated by order of that Tribunal; staff members of the organizations which come under UNAT cannot be reinstated by the latter's order alone. It is significant, in this regard, to refer to the statement of senior officials of the United Nations Industrial Development Organization (UNIDO): "As soon as UNIDO became a specialized agency, it shifted its recognition from UNAT to ILOAT, which was considered to be the stronger" (A/57/441-JIU/REP/2002/5, para. 64). In the view of UNAT, this represents a glaring example of injustice and discrimination between the two categories of staff members working under the United Nations system.

3. The United Nations Administrative Tribunal took note of the report of the Secretary-General to the General Assembly at its fifty-sixth session submitted under agenda item 169, entitled "Administration of justice at the United Nations", which suggests, in paragraphs 42 and 43, that either the statutes and practices of the two Tribunals should be fully harmonized or the current system could be retained with an increase in the limit of compensation to be paid. However, UNAT maintains that it is natural that if there is a need for further harmonization of the statutes of the two Tribunals, it may be considered on the merits and justifications provided, but it cannot be a condition unless all the articles and practices of both Tribunals are fully harmonized; harmonization of only two cannot be considered.

4. In view of the foregoing, the overwhelming support of various United Nations bodies and organs for the need to close the gap between the two Tribunals, and taking into account the far-reaching reforms in the area of human resources management that are taking place in the United Nations system, the United Nations Administrative Tribunal strongly recommends that the General Assembly amend article 9 of its statute with a view to closing the gap between the statutes of the two Tribunals and removing the restrictions on the authority of UNAT.